

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J'min Atiba Ward,

Plaintiff,

-against-

City of Middletown, et al.

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/19/2021

17-cv-5248 (NSR)
SECOND
SUPPLEMENTAL ORDER
OF SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff, currently residing at Eastern N.Y. Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983 related to alleged constitutional violations in conjunction with the execution of a no-knock warrant. The original complaint named the City of Middletown Police Department, John Doe, John Doe, John Doe, John Doe, Eric J. Harget, Orange County Sheriff's Office. (ECF No.1.) By order dated August 8, 2017, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*. (ECF No. 7.) On August 31, 2021, the Court sua sponte dismissed Plaintiff's claims (1) against the City of Middletown Police Department and the Orange County Sheriff's Office Special Operations Group, (2) claims against Defendant Correctional Officer John Doe, and (3) all claims brought on behalf of Plaintiff's wife and minor daughters. (ECF No. 10.) The Court also directed the Clerk of Court is directed to add the City of Middletown and the County of Orange as Defendants, and to mail a copy of the order to the City and County attorneys, and directed Plaintiff to file an amended complaint. (*Id.*) Plaintiff filed his first amended complaint on September 12, 2017, naming only the City of Middletown and the County of Orange. (ECF No. 12.) On October 26, 2017, counsel for the County confirmed the names and service addresses for the County John Does. (ECF No. 22.) On November 8, 2017,

counsel for the City also responded identifying the names of the current and former police chief. (ECF No. 29.)

On November 2, 2017, Plaintiff attempted to file second amended complaint against City of Middletown, County of Orange, Kenneth Decker, Carl Dubois, Steven Brockett and John Doe without leave to do so. (ECF No. 26.) In September 2018, the Court extended the City and Counties' time to respond to the second amended complaint until 60 days after all newly identified City and County defendants have been named, served and requested representation. (ECF Nos. 37 and 38.) In November 2020 the Court issued an order clarifying that Plaintiff was required to amend the Second Amended Complaint to name the individuals identified by the City (ECF No. 29) and County (ECF No. 22) in response to the Court's August 31, 2017 Order of Service. (ECF No. 49.) Plaintiff filed a second amended complaint on November 30, 2020 against Ramon Bethancourt, Paul Brahm, Steven Brockett, City of Middletown, Jason Davis, Chris DeSena, Kenneth Decker, Carl Dubois, Daniel Greer, Eric J. Hargett, Vincent Iannuzzi, Jason Kahmar, Michael Kania, Daniel Lopez, Brian Shanley, John Trazino, Anthony Weed. (ECF No. 50.) In January 2021, the Court issued a supplemental order of service, but inadvertently omitted Kenneth Decker and Carl Dubois, who were named in Plaintiff's amended pleading, and appear to be affiliated with the County. (ECF No. 51.) The appearing County Defendants and the appearing City Defendants have moved to dismiss the second amended complaint. (ECF Nos. 80 and 86.) The memorandum in support of County's motion, which was mailed to Plaintiff on May 10, 2021, stated that Decker and Dubois had never been served. (ECF No. 88 at 1 n.1; *see* ECF No. 90.) Plaintiff opposed the County's motion but did not address the service issues. (*see* ECF No. 91.)

On October 18, 2021, the Court received a letter from Plaintiff, dated October 12, 2021, in which Plaintiff appears to seek an extension to serve Decker and Dubois. (ECF Nos. 99 and 100.)

The County Defendants have opposed Plaintiff's request because (1) the three-year statute of limitations applicable to Plaintiff's claims against Decker and Dubois expired in April 2020, and (2) that County Defendants notified Plaintiff that Decker and Dubois were never served in May 2021 and Plaintiff did not address this issue in his opposition to the motion to dismiss or in any of his multiple additional submissions to the Court following the submission of the motion in June and waited an additional four months to seek permission to serve them. (ECF No. 101.)

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). Because Decker and Dubois were inadvertently omitted from the Court's supplemental order of service, **the Court directs the County attorney to provide the Court and the Plaintiff with the service address for Decker and Dubois on or before November 2, 2021.** Upon receipt of this information, the Court will issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for Decker and Dubois and deliver the documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is directed mail a copy of this order to pro se Plaintiff at the address on ECF and to show service on the docket.

Dated: October 19, 2021
White Plains, New York



NELSON S. ROMÁN
United States District Judge